

**IN THE CLAIMS:**

The text of all pending claims, (including withdrawn claims) is set forth below. Cancelled and not entered claims are indicated with claim number and status only. The claims as listed below show added text with underlining and deleted text with ~~strikethrough~~. The status of each claim is indicated with one of (original), (currently amended), (cancelled), (withdrawn), (new), (previously presented), or (not entered).

Please AMEND the claims in accordance with the following:

1. (CURRENTLY AMENDED) A communications method of performing communications by switching over a plurality of communication modes, comprising:

measuring a communication performance between a plurality of communication devices each comprising a CPU and a memory and being connected to-via a network, by measuring a communication time of each of the communication modes of one of the communication devices under a plurality of communication conditions comprising a version of an operating system corresponding to each of the communication devices;

obtaining a condition-based optimum communication mode in which the communication time in one of the communication modes of the one of the communication devices, exceeds a communication time of other communication modes per communication condition of the one of the communication devices; and

selecting the condition-based optimum communication mode in accordance with the communication condition when in communications with the other communication device, and performing the communications between the communication devices based on the condition-based optimum communication mode of the one of the communication devices.

2. (CURRENTLY AMENDED) A communication device for performing communications with another communication device, each communication device comprising a CPU and a memory and being connected to-via a network, by switching over a plurality of communication modes, comprising:

a performance measuring module for measuring a communication performance of the communication device to the other communication device, by measuring a communication time of each of the communication modes of the communication device under a plurality of communication conditions comprising a version of an operating system corresponding to each of the communication devices;

a optimum mode obtaining module for obtaining a condition-based optimum communication mode in which the communication time of the communication device to the other communication device in one of the communication modes exceeds a communication time of other communication modes per communication condition based on the measured communication time; and

a selection module for selecting the condition-based optimum communication mode in accordance with the communication condition when in communications, to thereby perform the communications between the communication devices based on the condition-based optimum communication mode of the communication device.

3. (CANCELLED)
4. (CANCELLED)
5. (CANCELLED)

6. (CURRENTLY AMENDED) A ~~readable-by computer~~ computer readable medium recording medium recorded with a program implementing a method for ~~of performing~~ communications between a plurality of communication devices connected to a network, by switching over a plurality of communication modes, ~~said program~~ the method comprising:

measuring a communication performance between ~~a~~ the plurality of communication devices, each communication device comprising a CPU and a memory and being connected to ~~via~~ a ~~the~~ network, by measuring a communication time of each of the communication modes of one of the communication devices under a plurality of communication conditions comprising a version of an operating system corresponding to each of the communication devices;

obtaining a condition-based optimum communication mode in which the communication time of one of the communication modes of the one of the communication devices, exceeds a communication time of other communication modes per communication condition of the one of the communication devices; and

selecting the condition-based optimum communication mode in accordance with the communication condition when in communications with the other communication device, and performing the communications between the communication devices based on the condition-based optimum communication mode of the one of the communication devices.

7. (CANCELLED)

8. (PREVIOUSLY PRESENTED) A communication device according to claim 2, further comprising:

a storage unit for storing a condition-based optimum communication mode,

wherein said performance measuring module measures the communication performance in the communications with said other communications device if not stored with the condition-based optimum communication mode in communications with said other communications device when performing the communications with said other communication device, and

said optimum mode obtaining module obtains the condition-based optimum communication mode.

9. (CANCELLED)

10. (CANCELLED)

11. (CANCELLED)